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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91237315
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AMERICAN MARRIAGE  
MINISTRIES,

Opposer,

v.

UNIVERSAL LIFE CHURCH  
MONASTERY STOREHOUSE,

Applicant.

Opposition No. 91237315

APPLICANT’S OPPOSITION TO  
OPPOSER’S MOTION FOR PARTIAL  
SUMMARY JUDGMENT

**I. INTRODUCTION**

The Board should deny Opposer’s motion for partial summary judgment because Opposer American Marriage Ministries (“AMM”) either provides no evidence, or there is conflicting evidence demonstrating a genuine disputed issue of material fact, regarding whether the GET ORDAINED mark is generic or merely descriptive in relation to the Class 35 and Class 45 services identified in Application No. 87430729. First, AMM provides no admissible evidence contesting the distinctiveness of the GET ORDAINED mark in relation to any of the applied-for services other than “[e]cclesiastical services, namely, ordaining ministers to perform religious ceremonies.” Second, AMM provides no evidence that the GET ORDAINED mark is generic in relation to such “ecclesiastical services”, and admissible evidence shows the GET ORDAINED mark is not generic for such services. Third, substantial evidence demonstrates that the GET ORDAINED mark is

suggestive, not descriptive, in relation to Applicant's "ecclesiastical services," raising at least a genuine dispute of material fact. Fourth, even if the GET ORDAINED mark were descriptive in relation to Applicant's "ecclesiastical services," substantial evidence shows that the GET ORDAINED mark has acquired secondary meaning under Section 2(f), raising a genuine dispute of material fact as to its distinctiveness.

## **II. RELEVANT FACTS AND PROCEDURAL BACKGROUND**

ULC Monastery is nonprofit corporation and church that was incorporated in 2006. Since at least March 24, 2010, ULC Monastery has operated a website available at the GetOrdained.org domain name, through which it has offered and advertised online retail store services, conducting religious ceremonies, ecclesiastical services, namely, ordaining ministers to perform religious ceremonies, and provided information regarding religious belief systems. Since at least March \_\_, 2010, ULC Monastery has prominently used the GET ORDAINED trademark in connection with these services offered and advertised via the GetOrdained.org website. Opposer AMM does not dispute any of these facts in support of its motion. Matesky Decl. ¶ 4, Ex. A at Resp. to Interrogs. 3, 16; Goschie Decl. ¶¶ 7-9.

On April 28, 2017, ULC Monastery applied to register the GET ORDAINED mark in connection with the following services:

Class 35: On-line retail store services featuring clothing in the nature of shirts, hats, and stoles, stationery, business cards, bumper stickers, license plate holders, badges, pens, pins, musical sound recordings, bookmarks, bread, aromatic oil, portfolios, and publications in the nature of books, hand-outs, workbooks, manuals, brochures, and newsletters in the fields of religion, spirituality, marriage, law, and management.

Class 45: Conducting religious ceremonies; Ecclesiastical services, namely, ordaining ministers to perform religious ceremonies; Providing a website featuring information about religious belief systems.

On July 25, 2017, the examining attorney issued an office action requiring that Applicant replace several semicolons with commas in its identification of services. Applicant agreed, and the examining attorney issued a Notice of Publication on August 30, 2017. At no point did the examining attorney reject Applicant’s application on the ground that the GET ORDAINED mark is generic or descriptive for the applied-for services, or require that Applicant demonstrate secondary meaning under Section 2(f). Matesky Decl. ¶ 5, Ex. B. Applicant does not dispute any of these facts in support of its motion.

The examining attorney’s decision to approve registration of the GET ORDAINED mark without requiring Section 2(f) evidence (i.e., that the GET ORDAINED mark is inherently distinctive for the applied-for services) is consistent with PTO practice for similar marks. The PTO regularly registers trademarks consisting of the word “GET” followed by a second component, where the second component relates to some characteristic resulting from use of the applied-for goods or services:

<b>Mark</b>	<b>Relevant Goods/Services</b>	<b>Int’l Class</b>	<b>Registration Number</b>
GET TAN	“...non-medicated skin care preparations...”	3	5710865
GET LATHERED	“Skin soap”	3	5764374
GET BIG	“Dietary nutritional supplement”	5	1904065
GET HAIR	“Liquid hair growth products”	5	5741099

<b>Mark</b>	<b>Relevant Goods/Services</b>	<b>Int'l Class</b>	<b>Registration Number</b>
GET YOLKED <sup>1</sup>	"Dietary and nutritional supplements"	5	5758543
GET THE TEA	"Medicinal tea"	5	5654847
GET SOME...SLEEP	"transdermal patches for use in the treatment of lack of sleep"	5	5835272
GET VERIFIED	"... an application providing assistance in credentialing processes and compliance validations related to...qualification verifications..."	9	4857093
GET FRUITY	"Dried fruit products"	29	5724613
GET FADED <sup>2</sup>	"Liquor"	33	5826509
GET THAT RAISE	"Career planning services"	35	5783566
GetCash	"Matching borrowers with potential lenders..."	35	5844542
GET STAFFED UP	"...filling the temporary and permanent staffing needs of businesses...Professional staffing and recruiting services"	35	5844754
GET SCOUTED	"Modeling agency services"	35	5879767
GET CONNECTED	"Business networking and business networking referral services..."	35	5892601
GET ON THE BUS	"Transportation of passengers by bus"	39	5422714
GET NIMBLE	"Physical fitness training services"	41	4665106

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1 "Yolked" means "To be in a state of extreme muscular fitness." Matesky Decl. ¶ 7, Ex. D.

2 "Faded" means intoxicated or drunk. *Id.*

<b>Mark</b>	<b>Relevant Goods/Services</b>	<b>Int'l Class</b>	<b>Registration Number</b>
GET RIPPED <sup>3</sup>	“Physical fitness training services	41	5137759
GET STRETCHY	“Providing fitness training services in the field of stretching”	41	5321763
GET ADMITTED	“Admission consulting services, namely, consulting in the field of college admissions...”	41	3618883
GET FIT	“Health club services...”	41	4220188
GET EDUCATED	“Providing online educational information...”	41	4034179
GET IN THE KITCHEN	“Cooking instruction”	41	5713981
Get Your CEU <sup>4</sup>	“Continuing education services...”	41	5869853
GET HEALTHY @	“Health care”	44	5671078
GET HOOKED UP	“Internet based dating, matchmaking and social introduction services”	44	5578107
GET BETTER. GO HOME	“Rehabilitation patient care services”	44	5739217
GET LICENSED, STAY LICENSED	“Regulatory compliance consulting in the field of obtaining and maintaining all required business licenses and permits...”	45	4703730

Matesky Decl. ¶ 6, Ex. C.

Opposer filed its Notice of Opposition, claiming that the GET ORDAINED mark is generic and merely descriptive, on October 18, 2017. During the course of discovery, AMM produced internal ULC Monastery emails that AMM employees had improperly retained after they left the

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<sup>3</sup> “Ripped” means “Having an extremely defined physique.” *Id.*

employment of ULC Monastery. These emails include discussions of ULC Monastery’s keyword advertising and search engine optimization strategies and data. *See* Matesky Decl. ¶ 9, Ex. F at 190:7-191:12; Stephens Decl., Dkt. No. 21, Ex. F at AMM 00001. AMM does not dispute that it retained documents discussing ULC Monastery’s advertising strategy and search engine optimization information from the time when AMM’s agents were employees of ULC Monastery, that ULC Monastery did not authorize such retention, that such information is not generally shared publicly, and that AMM would not want their own search engine optimization or keyword advertising data should be treated on an “Attorneys Eyes Only” basis and not shared with ULC Monastery’s Operations Manager. Matesky Decl. ¶ 9, Ex. F at 60:3-13; 60:24-61:12, 62:17-63:3, 70:24-71:19, 190:7-191:12. Nonetheless, in support of its Motion for Partial Summary Judgment, AMM cites to a ULC Monastery discussing confidential search engine optimization information that AMM personnel improperly retained after termination of employment with ULC Monastery. *See* Stephens Decl. Ex. F at AMM 00001.

### **III. ARGUMENT**

#### **A. Applicable Legal Standard**

The party moving for summary judgment has the initial burden of demonstrating that there is no genuine dispute as to any material fact remaining for trial and that it is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1987); *Sweats Fashions Inc. v. Pannill Knitting Co. Inc.*, 833 F.2d 1560, 4 U.S.P.Q.2d 1793 (Fed. Cir. 1987). Opposer AMM bears the burden of proving that the GET ORDAINED mark is generic or merely descriptive. *See Princeton*

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4 “CEU” refers to “Continuing Education Units” and is disclaimed in Reg. No. 5869853. *Id.* at ¶ 6, Ex. C at 48-49, ¶ 7, Ex. D.

*Vanguard, LLC v. Frito-Lay North America, Inc.*, 114 U.S.P.Q.2d 1827, 786 F.3d 960, 965 (Fed. Cir. 2015) (generic); *StonCor Grp., Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 1332 (Fed. Cir. 2014) (merely descriptive). Whether an asserted mark is generic or merely descriptive is a question of fact. *Royal Crown Company, Inc. v. The Coca-Cola Company*, 127 U.S.P.Q.2d 1041, 892 F.3d 1358, 1364 (Fed. Cir. 2018). The nonmoving party (ULC Monastery) must be given the benefit of all reasonable doubt as to whether genuine disputes of material fact exist, and the evidentiary record on summary judgment, and all inferences to be drawn from the undisputed facts, must be viewed in the light most favorable to the nonmoving party (ULC Monastery). *See Opryland USA, Inc. v. Great Am. Music Show, Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992).

**B. The Board Should Disregard Exhibit F to the Stephens Declaration**

The Board should disregard Exhibit F to the Stephens Declaration submitted by AMM (Dkt. No. 21) because it is inadmissible to prove AMM’s factual contentions, and AMM has provided no basis to conclude that admissible evidence exists. To support a motion for summary judgment, the movant must cite to admissible evidence supporting its factual contentions. *See* Fed. R. Civ. P. 56(c)(1)(B) and (c)(2). “The burden is on the proponent to show that the material is admissible as presented or to explain the admissible form that is anticipated.” Fed. R. Civ. P. 56(c)(2) Committee Notes on Rules - 2010 amendment; *see also* T.B.M.P. § 528.05(a)(1) (“Objections to evidence may be made in a party’s responsive brief”). In this case, the Board should disregard Exhibit F to the Declaration of Nancy Stephens submitted with AMM’s brief.

As an initial matter, not a single page of Exhibit F has been authenticated. The Stephens Declaration, at paragraph 7, simply identifies Exhibit F as documents produced in discovery. Such discovery documents are not admissible except by stipulation or by meeting authentication



requirements for printed publications. 37 C.F.R. §§ 2.120(k)(3)(ii) and 2.122(e). The Stephens Declaration does not identify (based on personal knowledge or otherwise) what the documents in Exhibit F are, how they were obtained, when they were obtained, or who obtained the documents, or otherwise make any effort to authenticate Exhibit F as required under Fed. R. Evid. 901.

Pages 00682-83 and AMM 00770-78 of Exhibit F appear to be Internet materials, but they are not self-authenticating as printed publications, because they do not show the date on which they were accessed. *See* 37 C.F.R. § 2.122(e). Similarly, pages AMM 000376 and AMM 00771-73 are not self-authenticating because they fails to show a legible URL from which they were obtained. *See id.*

Pages AMM 00769-78 not only lack authentication, but AMM was not able to authenticate such documents by identifying who created such documents or when they were created when it was given the chance to do so. Matesky Decl. ¶ 9, Ex. F at 177:14-183:18. This was true even though AMM was notified that it would be deposed on “Opposer’s responses...to requests for production of documents...including documents produced in response to such requests [and] the investigation and preparation of such...documents,” and AMM conceded that there was no one at AMM that had greater knowledge than its 30(b)(6) designee regarding pages AMM 00769-78. *Id.* ¶ 8, Ex. E at 4, Matesky Decl. ¶ 9, Ex. F at 138:5-9.

Pages AMM 00376, AMM 00771-72, and AMM 00774 are also inadmissible due to illegibility. *See* TBMP § 704.08(b) (“The party who submits Internet materials must ensure that the evidence is legible”); 37 C.F.R § 2.126(a)(2); *RxD Media, LLC v. IP Application Development LLC*, 125 USPQ2d 1801, 1806 n.16 (T.T.A.B. 2018) (“Illegible evidence is given no consideration.”).

Pages AMM 00371-77 and AMM 00775 are inadmissible due to incompleteness. These pages show, at most, incomplete excerpts of online publications. However, a party seeking to introduce Internet publications as evidence must “ensure that such evidence is complete.” TBMP 704.08(b).

Page AMM 00001 is inadmissible for multiple reasons. First, as discussed above, it has not been authenticated, and Opposer gives no basis for believing it is admissible as a “printed publication” under 37 C.F.R. § 2.122(e). It is therefore inadmissible under 37 C.F.R. § 2.120(k)(3)(ii). Moreover, it is inadmissible as a matter of unclean hands. As discussed *supra* at 5-6, page AMM 00001 appears to be an internal ULC Monastery email that AMM personnel formerly-employed by ULC Monastery retained after leaving such employment, in violation of their duty of loyalty to ULC Monastery.

One of the fiduciary duties that the employee owes the employer is the “duty to act loyally for the principal's benefit in all matters connected with the agency relationship.” Restatement (Third) of Agency § 8.01 (2006). This duty of loyalty also prohibits an employee from using the employer's property, including confidential information, for the employee's or another's purposes. *Id.* § 8.05. AMM admitted that its personnel retained ULC Monastery strategy emails after they left the employment of ULC Monastery. Matesky Decl. ¶ 9, Ex. F at 190:7-191:12. AMM also admitted that its personnel were not authorized to share ULC Monastery emails with competitors, that AMM does not share AMM emails with competitors, and that its own advertising strategy information should be treated on an Attorneys Eyes Only basis and should not be shared with Dallas Goschie, ULC Monastery’s Operations Manager. *Id.* at 60:3-13; 60:24-61:12, 62:17-63:3, 70:24-71:19. Accordingly, the retention of confidential ULC Monastery emails by AMM personnel after leaving

the employment of ULC Monastery to set up a competing organization constitutes a breach of the duty of loyalty to the employer.

AMM should be barred from now using the wrongfully retained confidential emails shown in page AMM 00001 of Exhibit F in support of its position under the doctrine of unclean hands, which can be stated as:

‘[W]henever a party who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy.’

*Keystone Driller Co v. General Excavator Co* *Keystone Driller Co v. Osgood Co*, 290 U.S. 240, 244 54 S.Ct. 146, 78 L.Ed. 293, 19 USPQ 228 (1933) (quoting Pomeroy, Equity Jurisprudence (4th Ed.) § 397). The doctrine applies to “such violations of conscience as in some measure affect the equitable relations between the parties in respect of something brought before the court for adjudication.” *Id.* at 245. This is exactly the situation established here. AMM wishes to use an email its personnel retained in breach of their duty of loyalty in order to support its position in the present action.

**C. Opposer Provides No Evidence on Class 35 and Most Class 45 Services**

The Board should deny Opposer's motion because Opposer puts forth no evidence whatsoever regarding Applicant's Class 35 services or most services in Class 45. Applicant applied to register the GET ORDAINED mark for the following services:

Class 35: On-line retail store services featuring clothing in the nature of shirts, hats, and stoles, stationery, business cards, bumper stickers, license plate holders, badges, pens, pins, musical sound recordings, bookmarks, bread, aromatic oil, portfolios, and publications in the nature of books, hand-outs, workbooks, manuals, brochures, and newsletters in the fields of religion, spirituality, marriage, law, and management.

Class 45: Conducting religious ceremonies; Ecclesiastical services, namely, ordaining ministers to perform religious ceremonies; Providing a website featuring information about religious belief systems.

Matesky Decl. ¶ 5, Ex. B. In support of its motion, Applicant submits no evidence or argument regarding the meaning of the GET ORDAINED mark in relation to any Class 35 services.

Similarly, with regard to Class 45, AMM limits its argument and evidence to the use of the GET ORDAINED mark in relation to "ecclesiastical services, namely, ordaining ministers to perform religious ceremonies." *See* Opp.'s Br., Dkt. No. 21, at 3 (identifying these services in italics) and 4 (arguing GET ORDAINED is insufficiently distinctive "as it pertains to the 'ecclesiastical service' of 'ordaining ministers to perform religious ceremonies.'"). For brevity, Applicant will refer to such services as "ecclesiastical services" herein. In any event, the evidence relied upon by Opposer relates only to the applied-for ecclesiastical services. *See generally* King Decl.; Stephens Decl. Thus, because AMM has failed to provide evidence on which a trier of fact could conclude that the GET ORDAINED mark is generic or merely descriptive in relation to the applied-for Class 35 services or the applied-for Class 45 services other than Applicant's ecclesiastical services, the Board should deny Opposer's motion with regard to such services.

**D. Opposer Provides No Evidence that the GET ORDAINED Mark is Generic for Applicant's Ecclesiastical Services.**

The Board should deny Opposer's motion because Opposer provides no evidence supporting its claim that the GET ORDAINED mark is generic for Applicant's ecclesiastical services, and Applicant submits evidence directly contradicting this factual claim. A term is generic in relation to goods or services if it "is the common descriptive name of a class of goods or services." *Princeton Vanguard, LLC v. Frito-Lay North America, Inc.*, 114 U.S.P.Q.2d 1827, 786 F.3d 960, 965 (Fed. Cir. 2015) (quoting *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 989 (Fed. Cir. 1986)). "The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term...to refer to the genus of goods or services in question." *Marvin Ginn*, 782 F.2d at 989-90. Whether a mark is generic in relation to applied-for services is a question of fact. *Princeton Vanguard*, 786 F.3d at 964.

Opposer argues that Applicant's GET ORDAINED mark is generic in relation to Applicant's services, because it "consists of common words used either to describe the exact generic service in the phrase or to direct people to seek that generic service." Opp.'s Br. at 4. This argument misstates the law and is unsupported by evidence. Accordingly, the Board should deny Opposer's motion because Opposer does not identify the relevant class of services, provides no evidence that the GET ORDAINED mark is primarily used or understood to refer to any class of services, and Applicant's evidence shows that the GET ORDAINED mark is not used or understood in such manner.

**First**, AMM puts forth no argument or evidence what "the exact generic service in the phrase" means in this case. *See* Opp.'s Br. at 4. To bear its burden of proving genericness, AMM must satisfy a two-part test. AMM must first identify the relevant class of services, and then

demonstrate that there is no factual dispute that that the GET ORDAINED mark is primarily understood by the relevant public to refer to this class of services. *See Princeton Vanguard*, 786 F.3d at 990. AMM simply ignores the first prong, does not identify the relevant class of services at issue, and provides no evidence to support any such identification.<sup>5</sup> *See generally* Opp.’s Br. It is impossible to satisfy the second step of the genericness test—demonstrating that a term is primarily understood to refer to the relevant class of services—without properly satisfying the first step. *See Real Foods Pty Ltd. v. Frito-Lay North America, Inc.*, 128 U.S.P.Q.2d 1370, 906 F.3d 965, 981-21 (Fed. Cir. 2018) (remanding for further analysis because failure to properly identify the genus at step one, affected the analysis in step two). This failure to meet its burden of satisfying the test for genericness independently requires denial of AMM’s motion.

**Second**, AMM provides no evidence that the relevant public uses or understands the GET ORDAINED mark as the common term for any class of services. Rather, AMM relies on dictionary definitions of the constituent elements of GET ORDAINED mark: “get” and “ordained.” Opp.’s Br. at 5. The Federal Circuit has rejected this approach as a matter of law. *See Princeton Vanguard*, 786 F.3d at 967 (One “cannot simply cite definitions and generic uses of the constituent terms of a mark...in lieu of conducting an inquiry into the meaning of the disputed phrase as a whole...”); *see also Beling v. Ennis, Inc.*, 613 Fed. Appx. 924, 926-27 (Fed. Cir. 2015). In *Beling*, the Federal Circuit approved a grant of summary judgment for the applicant where the opposer relied on

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<sup>5</sup> Notably, AMM testified under oath that the category of services provided by ULC Monastery is “religious services.” Matesky Decl. ¶ 9, Ex. F at 122:1-4. Yet, AMM does not refer to that class of services in its brief, presumably because it could not provide evidence that “GET ORDAINED” is a common term to refer to such class of services.

definitions of the constituent elements of a compound mark and third-party uses that did not show public understanding of the applied-for mark as identifying a class of services.

AMM also relies on snippets of testimony cherry-picked from the deposition of Applicant's President, George Freeman, which exclude relevant context and generally misrepresent Mr. Freeman's testimony and beliefs. *See* Opp.'s Br. at 5-6; Freeman Decl. ¶ 20-23. Yet, even these cherry-picked excerpts fail to support AMM's genericness argument. None of AMM's cited testimony shows that the GET ORDAINED mark is primarily used or understood by the relevant public as the common term for a particular class or category of services. Opp's Br. at 5-6. Mr. Freeman never said any such thing, and AMM's counsel never asked him to provide such testimony.<sup>6</sup> Even in the testimony cited in AMM's brief Mr. Freeman simply states that the term "get ordained" could have multiple meanings to different people in different contexts. *See* Opp.'s Br. at 5-6; Freeman Decl. ¶ 26; Matesky Decl. ¶ 10, Ex. G at 43:7-11, 44:8-10. Such ambiguous testimony is insufficient to meet AMM's burden of showing there is no factual dispute that the GET ORDAINED is primarily used and understood as the common term for a genus of services.

In fact, both ULC Monastery and AMM have provided testimony directly contradicting AMM's contention. Mr. Freeman has testified that, to him, in the abstract, the term "get ordained" refers to an individual's internal calling or motivation to express or carry out his spiritual beliefs. ULC Monastery, via its Operations Manager Dallas Goschie, has testified the same. Freeman Decl.

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<sup>6</sup> Although AMM's counsel repeatedly asked Mr. Freeman to define the term "get ordained" in various ways and formats, and cherry-picked the responses that AMM likes best, AMM's questions were always devoid of context. AMM's counsel never asked that Mr. Freeman give testimony on the primary meaning or understanding of the GET ORDAINED mark in relation to ULC Monastery's services. *See* Freeman Decl. ¶ 13-19, 25; Matesky Decl. ¶ 10, Ex. G at 41:19-21.

¶ 15; Matesky Decl. ¶ 10, Ex. G at 15:12-21. This is consistent with AMM’s testimony that the phrase “get ordained” may be used to refer to something that an individual does or experiences, as opposed to a class of services provided by a religious institution. Matesky Decl. ¶ 9, Ex. F at 113:12-18, 114:1-11, 115:13-116:8, 119:24-120:15. Mr. Freeman has also testified that, after decades of experience in the religious services field, he has never heard anyone use the term “get ordained” or “get ordained services” as the common or generic term for a class or category of services, including any services provided by Applicant. Freeman Decl. ¶ 24.

Such contradictory declaration and deposition testimony, taken in the light most favorable to ULC Monastery, precludes summary judgment on the issue of genericness. *See Octocom Sys. Inc. v. Houston Computer Servs. Inc.*, 918 F.2d 937, 941, 16 USPQ2d 1783, 1786 (Fed. Cir. 1990) (to establish the existence of disputed facts requiring trial, the nonmoving party “must point to an evidentiary conflict created on the record at least by a counterstatement of facts set forth in detail in an affidavit by a knowledgeable affiant.”); *see also Westrex Corp. v. New Sensor Corp.*, 83 U.S.P.Q.2d 1215, 1217 (T.T.A.B. 2007) (accepting declaration submitted with summary judgment motion that clarifies discrepancies in discovery deposition).

**Third**, AMM misstates the law by suggesting, without citation to any authority, that a term is generic in relation to a service if it “direct[s] people to seek that generic service.” Opp.’s Br. at 4. Even if this were an accurate statement of the law (it is not), it is meaningless in light of AMM’s failure to identify the relevant class of services. In any event, as discussed in Section \_\_, *supra*, the PTO regularly registers “GET \_\_\_\_\_” trademarks analogous to the GET ORDAINED mark



where the second component relates to some characteristic resulting from use of the product or services. *See* Matesky Decl. ¶ 6, Ex. C.

Such registrations constitute evidence that this type of mark is not generic, but is in fact inherently distinctive. *See Cross Commerce Media, Inc. v. Collective, Inc.*, 120 U.S.P.Q.2d 1517, 841 F.3d 155, 165-66 (2d. Cir. 2016) (“[E]ven where the PTO has not previously considered the particular mark at issue, courts may draw a measure of guidance from the way the agency has classified analogous marks.”); *Borinquen Biscuit Corp. v. M.V. Trading Corp.*, 443 F.3d 112, 119 (1st Cir. 2006) (“Courts frequently have accorded weight to these kinds of PTO determinations in evaluating whether a mark is descriptive or inherently distinctive.”); *see also* TBMP 528.05(d) (third party registrations may be made of record on summary judgment by filing copies with a party’s brief).

Accordingly, AMM’s motion should be denied because AMM has failed to meet its burden to show that no genuine dispute of fact exists regarding whether the GET ORDAINED mark is generic in relation to ecclesiastical services, and because the available evidence shows that the GET ORDAINED mark is not generic in relation to ecclesiastical services. At the very least, a dispute of fact regarding genericness exists precluding summary judgment.

**E. The GET ORDAINED Mark is Suggestive for Ecclesiastical Services**

The Board should deny AMM’s motion because a genuine dispute of fact exists as to whether the GET ORDAINED mark is suggestive or descriptive in relation to Applicant’s ecclesiastical services. A suggestive mark requires imagination, thought, or perception to reach a conclusion as to the nature of the goods or services with which it is used, while a merely descriptive mark forthwith conveys an immediate idea of the ingredients, qualities, or characteristics of such

goods or services. *See Stoncor Group, Inc. v. Specialty Coatings, Inc.*, 111 U.S.P.Q.2d 1649, 759 F.3d 1327, 1332-33 (Fed. Cir. 2014). Whether a mark is suggestive or descriptive is a question of fact. *Id.* Opposer’s motion should be denied because Opposer fails to put forth evidence demonstrating the absence of a factual dispute regarding whether the GET ORDAINED mark is descriptive, and because Applicant has provided evidence demonstrating that the GET ORDAINED mark is suggestive, demonstrating a genuine dispute of fact that precludes summary judgment.

The same defects in AMM’s evidence regarding genericness, addressed *supra*, also undermine AMM’s claim that the GET ORDAINED mark is descriptive, as opposed to suggestive, of Applicant’s ecclesiastical services. First, the dictionary definitions of “get” and “ordained” on which AMM relies (Opp.’s Br. at 5) are insufficient to support a claim that the GET ORDAINED mark as a whole is descriptive. *Beling*, 613 Fed. Appx. at 926-27; *Stoncor Group*, 759 F.3d at 1333. Second, the testimony of Mr. Freeman cited by AMM actually demonstrates that the GET ORDAINED mark is suggestive, rather than descriptive. Mr. Freeman testified that the words “get ordained” can have multiple meanings, depending on context, and could potentially describe a wide variety actions, feelings, or services unrelated to Applicant’s applied-for ecclesiastical services (e.g., “Get ordained to join the forces”). *See* Opp.’s Br. at 5-6; Freeman Decl. ¶ 26-28; Matesky Decl. ¶ 10, Ex. G at 44:4-10.

This evidence shows that the GET ORDAINED mark is suggestive, not descriptive. *See Playtex Products, Inc. v. Georgia-Pacific Corp.*, 390 F.3d 158, 164 (2d. Cir. 2004) (a term that “could plausibly describe a wide variety of products” is suggestive, not descriptive, in a trademark sense) (Sotomayor, J.). This is because a prospective user or recipient of Applicant’s services must apply some thought or inference to relate the multiple potential meanings of the GET ORDAINED

mark to the ecclesiastical services provided by Applicant. As the Sixth Circuit described in *Innovation Ventures, LLC v. N.V.E., Inc.*:

“The ‘5-hour ENERGY’ mark could be characterized as merely descriptive, in the sense that it simply describes a product that will give someone five hours of energy. But that is not the end of such an inquiry. The first question one would ask is how would the energy be transferred? Through food? Through drink? Through injections? Through pills? Through exercise? Also, one would ask what kind of energy is the mark referring to? Food energy (measured in Calories)? Electrical energy? Nuclear energy? With some thought, one could arrive at the conclusion that the mark refers to an energy shot. But it is not as straightforward as NVE suggests. Such cognitive inferences are indicative of ‘suggestive’ rather than descriptive marks.”

*Innovation Ventures, LLC v. N.V.E., Inc.*, 104 U.S.P.Q.2d 1560, 694 F.3d 723, 730 (6th Cir. 2012).

The alleged third party uses of “get ordained” relied upon by AMM do not show that the mark is primarily descriptive or directly describes characteristics of Applicant’s services. As noted *supra*, these documents are inadmissible and should be disregarded. Similarly, AMM has not provided evidence that these alleged third party uses actually relate to the type of ecclesiastical services for which Applicant seeks registration. *7-Eleven Inc. v. Wechsler*, 83 U.S.P.Q.2d 1715, 1730 n.2 (T.T.A.B. 2007) (even if admissible, printed publications are only probative for what they show on their face). AMM admitted that it was unsure whether the entities identified in its cited web pages provide the same category of services as ULC Monastery. Matesky Decl. ¶ 9, Ex. F at 121:18-25.

However, to the extent the Board considers such evidence, these alleged uses, at most, describe actions undertaken by an individual, not ecclesiastical services provided by churches or other similar organizations. *See* Stephens Decl. Ex. F; Matesky Decl. ¶ 9, Ex. F at 113:12-18, 114:1-11, 115:13-116:8, 119:24-120:15. This is consistent with Freeman and ULC Monastery’s

testimony that the words “get ordained” refer to an individual’s act or experience, not services provided by ULC Monastery or similar organizations. Freeman Decl. ¶ 15; Matesky Decl. ¶ 10, Ex. G at 15:12-21. It therefore takes some thought or inference to relate this individual act or experience to the ecclesiastical services provided by Applicant, and the GET ORDAINED mark is appropriately designated as suggestive. This conclusion is supported, the PTO’s regular practice of registering “GET \_\_\_\_\_” marks—without requiring a showing of secondary meaning—as suggestive and inherently distinctive.

**F. The GET ORDAINED Mark Has Acquired Secondary Meaning**

The Board should deny AMM’s motion because, even if the GET ORDAINED mark were descriptive in relation to Applicant’s ecclesiastical services, ULC Monastery’s evidence demonstrates that the GET ORDAINED mark has acquired secondary meaning as a trademark. Descriptive marks are registrable and protectable as trademarks where they have acquired distinctiveness—or secondary meaning—as a trademark. *See Real Foods Pty Ltd. v. Frito-Lay North America, Inc.*, 128 U.S.P.Q.2d 1370, 906 F.3d 965, 969 (Fed. Cir. 2018); *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 766, 112 S.Ct. 2753, 120 L.Ed.2d 615 (1992) (“This acquired distinctiveness is generally called ‘secondary meaning.’”). Secondary meaning “occurs when, in the minds of the public, the primary significance of a mark is to identify the source of the product rather than the product itself.” *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 211, 120 S.Ct. 1339, 146 L.Ed.2d 182 (2000) (internal quotation marks, brackets, and citation omitted). The party moving for summary judgment has the initial burden to establish the absence of a genuine issue of material fact as to whether the applied-for mark has acquired secondary meaning as a trademark. *See The Nestle Co., Inc. v. Joyva Corp.*, 227 U.S.P.Q. 477, 479 (T.T.A.B. 1985).

In the present case, AMM has not submitted evidence demonstrating the absence of a genuine issue of material fact regarding secondary meaning. Rather, AMM relies on the bare assertion that “no admissible evidence suggests a secondary meaning has developed” and that Mr. Freeman admitted that third parties have used the term “get ordained” in some context or another. Neither basis is sufficient to carry AMM’s burden. First, AMM’s reference to Mr. Freeman’s testimony is insufficient. AMM claims that Mr. Freeman “admitted that at the time ULC filed its trademark application, other organizations may have used the phrase “get ordained” on their websites to talk about their own ordination services,” citing to Mr. Freeman’s deposition at 71:9-18. Opp.’s Br. at 7.

Testimony that some, unspecified third parties used the words “get ordained” is insufficient to carry AMM’s burden of demonstrating that no genuine issue exists regarding secondary meaning. As the Board has previously held, “whether or not third party usage effectively prevents [the applied-for mark] from attaining secondary meaning depends on the facts of each case and is but one factor to consider...one’s use need not be exclusive in order to establish secondary meaning.” *Nestle*, 227 U.S.P.Q. at 479 (citations omitted). Here, as discussed *supra*, the alleged third party uses in question are inadmissible, and AMM concedes that it is not sure whether such uses related to the “ecclesiastical services” provided by ULC Monastery. *See* Matesky Decl. ¶ 9, Ex. F at 121:18-25. Where questions remain as to whether alleged third party uses are actually used in connection with competing services, such evidence is insufficient to carry the burden of a summary judgment movant. *See Nestle*, 227 U.S.P.Q. at 479.

Second, substantial evidence supports the factual conclusion that the GET ORDAINED mark has achieved secondary meaning as a trademark in the minds of the relevant public. Evidence

supporting a finding of secondary meaning includes length of use. Indeed, the Lanham Act specifically states that substantially exclusive and continuous use of a term as a trademark may constitute prima facie evidence that the mark has acquired distinctiveness. *See* 15 U.S.C. § 1052(f). In the present case, ULC Monastery has continuously used the GET ORDAINED mark in connection with its ecclesiastical services for over nine years. As discussed above, AMM fails to provide any admissible evidence that such use is not exclusive in connection with competitive ecclesiastical services.

Evidence of substantial sales of goods or services in connection with the applied-for mark also constitutes evidence of secondary meaning. *See In re Uncle Sam Chemical Co., Inc.*, 229 U.S.P.Q. 233, 235 (T.T.A.B. 1986) (declaration showing considerable sales under the mark sufficient to demonstrate secondary meaning); *see also 7-Eleven*, 83 U.S.P.Q.2d at 1722 (noting sales figures as evidence of “recognition and renown”). In the present case, ULC Monastery does not sell its ecclesiastical services, but provides them free of charge. Matesky Decl. ¶ 4, Ex. A at Resp. to Interrogs. 2-3, 5, 11, 13, and 18. However, since 2010, approximately [REDACTED] individuals across the United States have become ministers through the ecclesiastical services marketed by ULC Monastery under the GET ORDAINED trademark through the GetOrdained.org website. Goschie Decl. ¶¶ 11-13; *see also Ava Ruha Corp. v. Mother’s Nutritional Center, Inc.*, 113 U.S.P.Q.2d 1575, 1578 (T.T.A.B. 2015) (Fed. R. Civ. P. 56(c)(4) allows testimony from personal knowledge based on review of files and records or position with company). This evidence, coupled with Applicant’s nine-year history of use of the GET ORDAINED mark, is sufficient to demonstrate that the GET

ORDAINED mark has acquired secondary meaning (if it were not already inherently distinctive).

At a minimum, it raises a genuine factual dispute as to secondary meaning.

#### **IV. CONCLUSION**

For the reasons stated above, Applicant respectfully requests that the Board deny Opposer's motion for partial summary judgment...

DATED: October 30, 2019

Respectfully submitted:

MATESKY LAW<sup>PLLC</sup>

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Attorney for Applicant

### **CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing on Opposer's counsel of record by email transmission to [nancy.stephens@foster.com](mailto:nancy.stephens@foster.com), pursuant to Trademark Rule § 2.119(b), 37 C.F.R. § 2.119(b).

Dated: October 30, 2019

s/ Michael P. Matesky, II/  
Michael P. Matesky, II



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AMERICAN MARRIAGE  
MINISTRIES,

Opposer,

v.

UNIVERSAL LIFE CHURCH  
MONASTERY STOREHOUSE,

Applicant.

Opposition No. 91237315

DECLARATION OF DALLAS  
GOSCHIE

I, Dallas Goschie, declare as follows:

1. I am over the age of eighteen years and otherwise competent to testify in this matter.
2. I make this declaration based on my personal knowledge.
3. I first began working for Applicant Universal Life Church Monastery Storehouse (“ULC Monastery”) as an administrative assistant in the summer of 2013.
4. From July of 2014 to the present, I have been Operations Manager for ULC Monastery.
5. In my roles with ULC Monastery, I am familiar with the day-to-day operations of ULC Monastery.
6. I have reviewed records available to ULC Monastery regarding ULC Monastery’s history of using the trademark GET ORDAINED.

7. Records available to ULC Monastery show that ULC Monastery has offered and advertised online retail store services, conducting religious ceremonies, ecclesiastical services, namely, ordaining ministers to perform religious ceremonies, and providing information regarding religious belief systems, through the GetOrdained.org website since at least March 24, 2010.

8. Records available to ULC Monastery show that ULC Monastery has prominently used the GET ORDAINED trademark on the GetOrdained.org website since at least March 24, 2010.

9. Based on my personal knowledge and recollection, ULC Monastery has prominently used the GET ORDAINED trademark on the GetOrdained.org website in connection with online retail store services, conducting religious ceremonies, ecclesiastical services, namely, ordaining ministers to perform religious ceremonies, and providing information regarding religious belief systems, all offered and advertised through the GetOrdained.org website, for as long as I have worked with ULC Monastery.

10. Since ULC Monastery began using the GET ORDAINED trademark in connection with services offered via the GetOrdained.org website, ULC Monastery's use of the GET ORDAINED trademark has become more prominent.

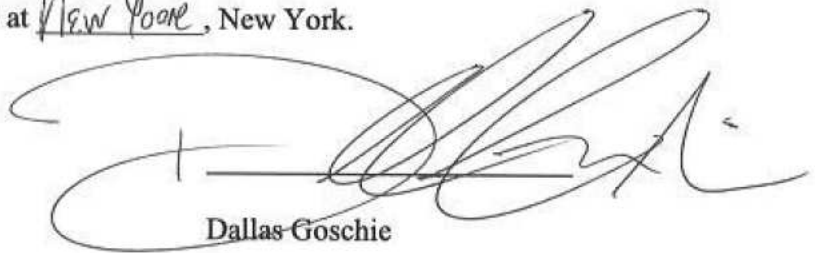
11. [REDACTED] of individuals have become ministers through the ecclesiastical services marketed by ULC Monastery under the GET ORDAINED trademark through the GetOrdained.org website.

12. ULC Monastery does not have records demonstrating the exact number of individuals who became ministers through the ecclesiastical services marketed by ULC

Monastery under the GET ORDAINED trademark through the GetOrdained.org website prior to 2014.

13. From 2014 to the present, [REDACTED] individuals across the United States have become ministers through the ecclesiastical services marketed by ULC Monastery under the GET ORDAINED trademark through the GetOrdained.org website.

DATED: October 30, 2019 at New York, New York.



Dallas Goschie

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AMERICAN MARRIAGE  
MINISTRIES,

Opposer,

v.

UNIVERSAL LIFE CHURCH  
MONASTERY STOREHOUSE,

Applicant.

Opposition No. 91237315

DECLARATION OF GEORGE  
FREEMAN

I, George Freeman, declare as follows:

1. I am the President of Applicant Universal Life Church Monastery Storehouse (“ULC Monastery”) and have held that role since ULC Monastery was incorporated in 2006.
2. I am over the age of eighteen years and otherwise competent to testify in this matter.
3. I make this declaration based on my personal knowledge.
4. ULC Monastery formerly employed Dylan Wall, Glen Yoshioka, Maurice King, and Lewis King, before they became affiliated with the Opposer in this action, American Marriage Ministries.
5. In the course of their employment, ULC Monastery shared information with Mr. Wall, Mr. Yoshioka, and Messrs. King that ULC Monastery intended and expected to remain confidential and used solely for ULC Monastery purposes.

6. Such information included emails and other documents comprising information regarding keyword advertising, marketing, and search engine optimization efforts.

7. It was ULC Monastery's intention and expectation that its employees, including Mr. Wall, Mr. Yoshioka, and Messrs. King, would not retain such internal and confidential ULC Monastery information after their departure from ULC Monastery.

8. On January 16, 2019, I was deposed in this matter by counsel for Opposer American Marriage Ministries ("AMM").

9. I am 30 years old, and was 40 years old on the date of my deposition.

10. I suffer from hearing loss, both now and on the day of my deposition. I use a hearing aid in each ear to compensate for such hearing loss.

11. During my deposition, I repeatedly had trouble hearing and understanding the questions posed by AMM's counsel. I reference this problem, for example, at page 23, lines 3-4 of my deposition transcript.

12. During my deposition, the battery in one of my hearing aids, and then the second of my hearing aids, lost power. I refer to this on page 77, lines 18-19 of my deposition transcript.

13. During my deposition, AMM's counsel asked me the same thing multiple times.

14. For example, AMM's counsel asked me what it means to be "ordained" and what the words "Get Ordained" mean multiple times.

15. To me, in the abstract, the words "get ordained" refer to an individual's recognition of a calling or motivation to fulfill a spiritual purpose. It is not an act that another person can perform for you, but an act or recognition that occurs within oneself. This is a



paraphrase of what I told AMM's counsel relatively early on during my deposition, at page 15, lines 12-21 of my deposition transcript.

16. However, AMM's counsel continued to ask me what "get ordained" meant.

17. At one point, AMM's counsel asked me "What does the phrase 'get ordained' mean to you?" This is on page 41, line 21 of my deposition transcript. She did not ask what it means when used in connection with ULC Monastery's services or in any other particular context. I simply repeated the words "get ordained" and said they were "self-explanatory," as shown on page 41, lines 22 and 24 of my deposition transcript.

18. I gave this response in part because I was frustrated at being asked the same thing multiple times, despite already answering, and having a hard time hearing AMM's counsel.

19. What I meant by my response, was that I had already explained what I believe it means to be "ordained." In fact, I told her "I think I explained that earlier" on page 42, line 14 of my transcript.

20. In its motion, AMM claims that I "understand[] the phrase 'get ordained' to refer to the generic meaning of the phrase rather than to ULC's services." This is not an accurate description of my understanding, my beliefs, or my deposition testimony.

21. I do not believe that the term "get ordained" has any generic meaning in relation to ULC Monastery's services.

22. I do not believe that the term "get ordained" is used or understood as the common term for any class or category of services provided by ULC Monastery.

23. The common terms for services provided by ULC Monastery would include terms like “church services,” “religious services,” “ecclesiastical services,” “marriage ministry services,” or “online store services.”

24. I have been involved in the field of religious services for well over thirty years and have never heard anyone refer to “get ordained” or “get ordained services” as a common or generic term for any class or category of services, including any services provided by ULC Monastery.

25. AMM’s counsel did not ask me what I thought the words “get ordained” meant, primarily, to me or to others when they are used by ULC Monastery on or in connection with the services provided by ULC Monastery.

26. I believe, and made clear in my deposition testimony, that the words “get ordained” could have different meanings to different people when used in different contexts. For example, I believe, and testified, that “I am not the sole authority” at page 43, line 10 of my deposition transcript and that “There’s a thousand meanings I think you can construct those two words and carry it onto another achievement” on page 44, lines 8-10 of my deposition transcript.

27. Thus, it is certainly possible for someone out in the world to use the words “get ordained,” in some context, and not refer to ULC Monastery, just in the same way someone could tell an athlete worried about how they are going to finish a marathon that they need to “just do it,” without referring to Nike.

28. However, when the phrase “Get Ordained” is used prominently in connection with the religious services, ecclesiastical services, and religious and spiritual information services provided by ULC Monastery in the manner that trademarks are typically used—as on

the GetOrdained.org website, for example—I believe those words mean and are understood as an identification of who is providing the services (ULC Monastery), the same way that “Just Do It” printed on the tags of athletic shoes is understood to identify who is providing the shoes (Nike).

DATED: October 30, 2019 at New York, New York



George Freeman



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AMERICAN MARRIAGE  
MINISTRIES,

Opposer,

v.

UNIVERSAL LIFE CHURCH  
MONASTERY STOREHOUSE,

Applicant.

Opposition No. 91237315

DECLARATION OF MICHAEL P.  
MATESKY, II

I, Michael P. Matesky, II, declare as follows:

1. I am and at all relevant times have been counsel for Applicant in this matter.
2. I am over the age of eighteen years and otherwise competent to testify in this matter.
3. I make this declaration based on my personal knowledge.
4. Attached hereto as Exhibit A are true and correct excerpts from Applicant's Responses to Opposer's First Set of Interrogatories to Applicant as served on Opposer in this matter.
5. Attached hereto as Exhibit B are true and correct copies of the Application, Office Action, Examiner's Amendment, and Notice of Publication from the file history of U.S. Trademark Application No. 87430729, as obtained from USPTO.gov.

6. Attached hereto as Exhibit C are true and correct copies of TESS printouts and registration certificates for multiple trademark registrations issued by the U.S. Patent & Trademark Office, as obtained from USPTO.gov.

7. Attached hereto as Exhibit D are true and correct copies of dictionary definitions for several terms included in the trademarks set forth in Exhibit C, as obtained from the online dictionary sites identified in such copies.

8. Attached hereto as Exhibit E is a true and correct copy of the Notice of Combined Deposition of American Marriage Ministries and Dylan Wall served on Opposer in this matter.

9. Attached hereto as Exhibit F are true and correct excerpts of the transcript of the Combined Deposition of American Marriage Ministries and Dylan Wall in this matter, as obtained from Seattle Deposition Reporters.

10. Attached hereto as Exhibit G are true and correct excerpts of the transcript of the Deposition of George Freeman in this matter, as obtained from TSG Reporting.

11. Attached hereto as Exhibit H are true and correct excerpts of the transcript of the Deposition of Dallas Goschie in this matter, as obtained from TSG Reporting.

DATED: October 30, 2019 at Seattle, Washington

s/ Michael P. Matesky, II/

Michael P. Matesky, II